



## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 926

[SATS No. MT-039-FOR; Docket No. OSM-2020-0004];  
S1D1S SS08011000 SX064A000 212S180110;  
S2D2S SS08011000 SX064A000 21XS501520

#### Montana Abandoned Mine Land Reclamation Plan

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Montana abandoned mine land (AML) reclamation plan (Montana Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposed to repeal and replace its existing AML Plan in response to OSMRE's request to amend the Plan and to improve the readability and efficiency of the document. Montana also submitted a statutory provision enacted by the State legislature in 2007 regarding its AML account for OSMRE approval.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Fleischman, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, 150 East B Street, Casper, WY 82601-7032. Telephone: (307) 261-6550. E-mail:

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#### SUPPLEMENTARY INFORMATION:

- I. Background on the Montana Plan
- II. Submission of the Amendment
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## **I. Background on the Montana Plan**

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval a program (often referred to as a plan) for the reclamation of abandoned coal mines.

On October 24, 1980, the Secretary of the Interior approved the Montana Plan. You can find general background information on the Montana Plan, including the Secretary's findings and the disposition of comments, in the October 24, 1980, **Federal Register** (45 FR 70445). OSMRE announced in the July 9, 1990, **Federal Register** (55 FR 28022) the Director's decision accepting certification by Montana that it had addressed all known coal-related impacts in the State that were eligible for funding under the Montana Plan. You can also find later actions concerning Montana's AML Program and Plan amendments at 30 CFR 926.25.

## **II. Submission of the Amendment**

Under the authority of 30 CFR 884.15, OSMRE directed Montana to update its Plan by letter dated March 6, 2019 (Document ID No. OSM-2020-0004-0003). OSMRE indicated that the Montana Plan required revisions to meet the requirements of SMCRA

as revised on December 20, 2006, under the Tax Relief and Health Care Act of 2006 (Pub. L. 109-432), and in response to changes made to the implementing Federal regulations as revised on November 14, 2008 (73 FR 67576) and February 5, 2015 (80 FR 6435). By letter dated August 4, 2020 (Administrative Record No. OSM-2020-0004-0002), Montana sent us an amendment to its State Plan under SMCRA (30 U.S.C. 1201 *et seq.*). Montana's amendment is intended to address all required amendments identified in OSMRE's letter dated March 6, 2019. The State also proposed additional changes as part of the State's initiative to improve the Plan's readability and operational efficiency. The State also proposed a statutory addition enacted by its legislature in 2007. Montana's amendment will repeal and replace the State's existing Abandoned Mine Lands (AML) Plan.

We announced receipt of the proposed amendment in the December 17, 2020, **Federal Register** (85 FR 81862). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because none were requested. The public comment period ended on January 19, 2021.

### **III. OSMRE's Findings**

The following are the findings we made concerning Montana's amendment under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15. We are approving the amendment as described below.

Montana's Legislature enacted new statutory language at 82-4-1006, MCA in 2007 regarding establishment, management, and use of funds in the State's Abandoned Mine Reclamation Account (Account). This new statute establishes the State's Abandoned Mine Reclamation Account within the Federal special revenue fund under existing 17-2-102, MCA. The Federal special revenue fund consists of money deposited in the State treasury from Federal sources, including trust income, that is used for

operation of the State government. This is the appropriate place to create an account for managing Federal grant funds under SMCRA. The applicable sections of 82-4-1006(1) through (3), MCA properly identify SMCRA AML Program funding sources, handling of interest, uses of funds including specific lands and waters eligible for project funding under the AML Program, and allowable reclamation activities. The listed eligible lands and waters as well as reclamation activities are in accordance with those allowed for certified States under SMCRA Section 411. Creation of such an account is required under SMCRA Section 401(a), which requires States to establish AML accounts for grant funds. Montana has fulfilled that responsibility by establishing its Abandoned Mine Reclamation Account.

According to 82-4-1006(4), MCA money in the Account that is subject to restrictions on use pursuant to Federal law, regulation, or grant conditions can only be used for the established purposes of the applicable Federal provision. Montana's Plan as revised under this amendment, as well as existing applicable statutory AML provisions, demonstrate that Montana's AML activities are consistent with SMCRA. Montana's Plan will prioritize addressing the impacts of historic mining and will comply with all grant requirements under 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. However, 82-4-1006(4), MCA ensures OSMRE grants, any abandoned mine lands grant funding from other Federal agencies, and any potential special future OSMRE funding received will be spent in accordance with applicable Federal restrictions.

Furthermore, 82-4-1006(5), MCA provides that unspent and unencumbered money must remain in the account at the end of the fiscal year until spent or appropriated by the State legislature. Montana's certified AML grants from OSMRE are typically provided on a three-year performance period, although this performance period can be extended at the State's request. The performance period begins when the AML grant

agreement is signed. If the State does not expend the funds during the course of the performance period they must return the unused funds back to OSMRE. However, the State can retain the unspent funds to carry over to the next year as long as it is within the performance period.

Because Montana's statutory language at 82-4-1006, MCA fulfills a requirement for the State to create AML accounts for grant funds at SMCRA section 401(a), all restrictions on handling and use of funds are in accordance with requirements for certified States under SMCRA section 411, and all grant funds will be managed in accordance with 2 CFR part 200, we are approving the addition of 82-4-1006, MCA.

#### *A. Revisions to Montana's Certified AML Plan*

Montana is repealing and replacing its AML Plan with a simplified version that is structured similarly to the Federal AML Plan content requirements for States at 30 CFR 884.13. Documentation associated with Montana's original AML Program approval and subsequent Plan revisions was included within the State's previous Plan, leading to a lengthy and often duplicative document that was difficult to navigate. Now, Montana has made multiple editorial changes for brevity and structural alignment with Federal requirements as well as updates consistent with the 2006 changes to SMCRA under the Tax Relief and Health Care Act of 2006 (Pub. L. 109-432) and the associated changes to the implementing Federal regulations on November 14, 2008 (73 FR 67576), and February 5, 2015 (80 FR 6435). In order to simplify the Plan, the new version omits large and lengthy documentation that is now either incorporated by reference, is no longer applicable to Montana's AML Program, was in duplicate copy, was replaced by updated information, or was never required to be included in the Plan. All changes are discussed below.

In order to simplify its Plan, Montana is removing and referencing **Federal**

**Register** documentation regarding its AML Program approval, Program and Plan revisions, and certification of completion of all known high priority coal hazards. Removal and incorporation by reference is appropriate because these documents are not required to be in the State Plan.

Throughout Montana's revised Plan, applicable State and Federal AML statutes and regulations are referenced, rather than incorporating the full text of those provisions. This approach decreases the overall volume of the Plan and prevents the need to further revise the Plan in the event of future statutory or regulatory changes. This change neither alters the statutes or regulations that apply to Montana nor the State's authority or procedures for implementing its certified AML Program.

Montana's revised Plan includes subsections entitled Background on Title IV of SMCRA, Background on the Montana Plan, and Purpose of the 2019 Revision. Inclusion of narrative program summaries is not required under the Federal program. However, it does provide background and context for the State's certified AML Plan and does not conflict with the established AML Plan content requirements at 30 CFR 884.13.

Montana's revised Plan includes copies of the Governor's 1977 and 1995 letters, respectively, initially designating the Department of State Lands and, then later after an agency reorganization, the Department of Environmental Quality, as the agency authorized to administer the State AML Program and to receive and administer grants under 30 CFR Part 886. Because Montana's AML Program is certified, it no longer receives grant funding from OSMRE under Part 886, but rather receives certified grant funding under 30 CFR part 885. While the 1977 and 1995 Governor's letters should be replaced with an updated version reflecting the State's certified grant recipient status and that it receives funding under 30 CFR part 885, the designated State agency remains the same as it was prior to certification. Montana has incorporated the Governor's letters designating the Department of Environmental Quality as the agency authorized to

administer the State AML Program and receive and administer grants in its Plan as required under 30 CFR 884.13(a)(1). Montana may replace these letters with an updated version without resubmitting that change to OSMRE as an amendment.

Montana provided an updated June 26, 2020, legal opinion from the State Attorney General indicating that the Department of Environmental Quality is the designated agency with the authority to conduct the AML Program in accordance with all requirements of SMCRA Title IV. Previous versions of this opinion have been removed from Montana's Plan because they are superseded by the new opinion. Montana has incorporated the Attorney General's letter in its Plan as required under 30 CFR 884.13(a)(2).

Federal regulations at 30 CFR 884.13(a)(3) require a description of the policies and procedures of the State agency, including the purposes of the State reclamation program. Montana's Plan includes a Policies and Procedures section that provides succinct descriptions of, and legal citations for, the purposes of its AML Program consistent with 30 CFR 884.13(a)(3).

Montana's revised Plan includes a section entitled Ranking and Selection that provides appropriate eligibility and prioritization criteria for coal and noncoal hazards based upon updated Federal program requirements, as well as the prioritization matrix Montana uses to assess and prioritize potential project areas for reclamation. This section is consistent with the Plan content requirements of 30 CFR 884.13(a)(3)(ii), which requires specific criteria, consistent with SMCRA, for ranking and identifying projects to be funded.

Montana's revised Plan includes a Limited Liability and Authorization to Proceed subsection under its Ranking and Selection section that indicates the State will comply with all applicable requirements to extend Limited Liability protections under SMCRA Section 405(l) to both coal and noncoal projects. Reclamation projects will not be

undertaken without first receiving an Authorization to Proceed from OSMRE. This is in accordance with SMCRA 405(l) and consistent with 30 CFR 874.15 and 875.19, Limited Liability, which now provide limited liability coverage to certified State coal and noncoal reclamation activities, unless the costs or damages were the result of gross negligence or intentional misconduct.

Montana's revised Plan includes a section entitled Coordination With Other Programs that indicates the State will coordinate with other agencies and offices including the Natural Resources Conservation Service within the Department of Agriculture (formerly known as the Soil Conservation Service), Indian Tribes, and OSMRE as required, as well as multiple other State and Federal entities. By indicating it will coordinate and work with all required agencies, as well as additional agencies applicable in the State, Montana's proposed section is consistent with the requirements of 30 CFR 884.13(a)(3)(iii).

To describe how land will be acquired, managed, and disposed of, Montana's Plan includes a section entitled Land Acquisition, Management and Disposal that incorporates all applicable State and Federal statutory sections by reference. This ensures activity will occur in accordance with established State and Federal AML Program requirements. Therefore, Montana's Plan includes the State's policies and procedures for land acquisition, management, and disposition consistent with the requirements of 30 CFR 884.13(a)(3)(iv).

Montana's revised Plan includes a section entitled Reclamation on Private Land and Rights of Entry that indicates the State will follow guidelines in SMCRA Section 407, 30 CFR part 882, and the provisions in 82-4-1006, -239, -371, and -445, MCA regarding reclamation work on private land. The reference to SMCRA Section 407 is incorrect and OSMRE advised Montana that the reference should be to Section 408, Liens. Montana intends to correct this reference in its Plan and does not need to resubmit



that change to OSMRE as an amendment. Montana also specifies that consent for entry will be obtained before entering private land, but if consent is denied procedures outlined in 30 CFR Part 877 and 82-4-239, -371, and -445, MCA will be followed. With the corrected citation, this section of Montana's Plan accurately provides the State's policies and procedures for reclamation on private lands and right of entry and is therefore consistent with the Plan content requirements of 30 CFR 884.13(a)(3)(v) and (vi).

Montana's revised Plan includes a section entitled Public Participation that indicates which State and Federal laws it will comply with pertaining to public participation, notice, and comment procedures for AML project activities and in other actions such as development of the AML Plan. Because Montana's proposed section provides the procedures and processes it will follow to ensure public participation and involvement in the State reclamation program and in preparation of the State reclamation Plan, this section is consistent with 30 CFR 884.13(a)(3)(vii).

As discussed above, Montana's revised Plan includes sections responding to the requirements of 30 CFR 884.13(a)(3)(i) through (vii). These sections provide updated descriptions of the State's policies and procedures for conducting its AML Program including: the purposes of the Program; specific criteria for ranking and identifying projects to be funded; coordination of reclamation work between the State and all applicable State and Federal agencies; land acquisition; reclamation on private land; right of entry; and public involvement in the State reclamation program. These sections are simplified from previous versions of the Plan to eliminate unnecessary volume. Montana's revised Plan is consistent with the AML Plan content requirements of 30 CFR 884.13(a)(3).

Federal regulations at 30 CFR 884.13(a)(4)(i) require a description of the designated agency's organization and relationship to other State entities that may participate in or augment the State's AML reclamation abilities. Montana's Plan includes

a section entitled Policies and Procedures, Department Structure, that provides these descriptions as well as an organizational chart depicting the entire Division of Environmental Quality and the AML Program's place within it.

Federal regulations at 30 CFR 884.13(a)(4)(ii) require a description of the personnel staffing policies that will govern assignments within the AML Program. Montana's revised Plan includes a section entitled Staffing and Personnel Policies that references applicable personnel and procurement policies such as the Age Discrimination Act of 1975 and the Civil Rights Act of 1964 rather than incorporating full text versions of these documents, which were included in the previous version of Montana's Plan. This change does not alter Montana's personnel or procurement procedures but decreases the overall volume of the Plan while still providing the information required under 30 CFR 884.13(a)(4)(ii).

Federal regulations at 30 CFR 884.13(a)(4)(iii) require State purchasing and procurement systems to meet the requirements of Office of Management and Budget Circular A-102, Attachment 0, relating to "Grants and Cooperative Agreements with State and Local Governments". Federal grantmaking agencies were previously required to issue a grants management common rule to adopt governmentwide terms and conditions for grants to States and local governments. As a result, the attachments to Circular A-102, including Attachment 0 referenced in 30 CFR 884.13(a)(4)(iii), have been replaced by the grants management common rule at 2 CFR part 200. The Federal regulations have not yet been updated to reflect this change; however, it is reflected in the State's revised Plan under the section entitled Purchasing and Procurement, which indicates its purchasing and procurement policies are consistent with 2 CFR part 200. This section provides descriptions of purchasing and procurement systems consistent with the requirements of 30 CFR 884.13(a)(4)(iii).

Montana's revised Plan includes a Contractor Eligibility subsection under the

Purchasing and Procurement section that indicates the State will comply with SMCRA section 510(c) and 30 CFR 875.20 in determining the eligibility of bidders on AML Program contracts through the Applicant Violator System (AVS). By referencing the applicable Federal statute and regulation, Montana's revised Plan incorporates all applicable contractor eligibility requirements and is therefore consistent with the Federal program at SMCRA section 510(c) and 30 CFR 875.20.

Federal regulations at 30 CFR 884.13(a)(4)(iv) require a description of the accounting system to be used by the agency including specific procedures for operation of the AML Fund. Montana's new Plan includes a section entitled Accounting System that describes the Statewide Accounting, Budgeting and Human Resources System, how it conforms to 2 CFR part 200, that funds are safeguarded and accounted for, how audits will be conducted and audit recommendations implemented, and programmatic and financial reports will be made to OSMRE as required.

As discussed above, Montana's revised Plan includes four sections providing revised descriptions of the State's administrative and management structure: Department Structure; Staffing and Personnel Policies; Purchasing and Procurement; and Accounting System. By providing all required descriptions of the administrative and management structure of the State AML agency, Montana's revised Plan is consistent with all AML Plan content requirements under 30 CFR 884.13(a)(4).

Montana's revised Plan includes sections entitled Description of Reclamation Activities, Montana AML Problems, and Plan to Address Problems that provide general descriptions derived from available data of the reclamation activities to be conducted under the State Plan including: a map showing the general location of known or suspected eligible lands and waters; a description of the problems occurring on those lands and waters; and how the Plan proposes to address each of the problems. Because Montana is certified, the State has already completed all known high priority coal

hazards. The revised maps and information reflect the State's certified status, identifying historic mining areas where AML hazards may occur, as well as general AML hazard types and abatement strategies without identifying specific project areas. Individual project approval and funding are appropriately handled through the Authorization to Proceed process under 30 CFR 885.16(e). Montana's revised Plan sections entitled Description of Reclamation Activities, Montana AML Problems and Plan to Address Problems are consistent with the AML Plan content requirements of 30 CFR 884.13(a)(5) in providing general descriptions of reclamation activities to be conducted including maps, descriptions of AML problems, and descriptions of hazard abatement strategies.

Montana's revised Plan includes sections entitled: Geographic Areas of Montana; Montana Economic Base; Significant Esthetic, Historic or Cultural, and Recreational Values; and Endangered and Threatened Plant, Fish, and Wildlife Habitat that provide general descriptions on each subject derived from available data on the conditions prevailing in the areas of the state where reclamation may occur. Montana has reduced the volume of these sections by omitting unnecessary documentation that was included in the previous version of its Plan such as detailed demographic information, projected population growth rates, graphics and charts depicting different population and employment parameters, and a map depicting the general topographic regions of the state. The omitted items were outdated and not required to be in the Plan. Montana's revised Plan provides descriptions of the prevailing conditions in the State where reclamation may occur consistent with the requirements of 30 CFR 884.13(a)(6).

Montana's revised Plan includes a section entitled Additional Requirement for Certified States and Indian Tribes that provides a commitment to address all eligible coal problems found or occurring after certification as required under 30 CFR 875.13(a)(3) and 875.14(b). Montana indicates it will prioritize coal hazards over noncoal hazards unless a noncoal hazard site imminently threatens human health or the environment, in

which case, the State will assess the need for taking appropriate action in consultation with OSMRE. By committing to give priority to addressing eligible coal problems found or occurring after certification as required in 30 CFR 875.13(a)(3) and 875.14(b), Montana's revised Plan is consistent with the AML Plan content requirements of 30 CFR 884.13(b).

Thus, we find that Montana's Plan, as amended, meets all content requirements stipulated under 30 CFR 884.13 while also updating the Plan consistently with changes made to the Federal program in 2006, 2008, and 2015. Montana's revised Plan, therefore, meets the requirements of OSMRE's March 6, 2019 letter, and we approve it.

#### *B. Sections Removed from the Montana Plan*

To simplify its revised Plan, Montana removed and did not replace extraneous, duplicate, and outdated documentation from the repealed version. A brief discussion of major sections no longer included in Montana's Plan is as follows:

Montana has removed its outdated AML hazard inventory, project planning, and estimated cost information. As a certified State, all high priority coal hazards have now been abated and such detailed project planning is neither possible nor required to be incorporated in Montana's Plan. Proposed projects are now appropriately identified by the State and approved by OSMRE through the Authorization to Proceed processes under 30 CFR 885.16(e).

Montana has removed the full text of several statutory and regulatory provisions from its Plan. As noted in the section above, many statutes and regulations are now incorporated by reference rather than copied in the Plan. However, some are removed and not referenced or replaced in the Plan. This action neither alters any existing statutes or regulations, which will continue to apply with full force and effect, nor does it alter which statutes or regulations apply to Montana's certified AML Program. Removals include: State statutes establishing the Board of Environmental Review; rules pertaining

to equal opportunity, handicapped person's preference, and purchasing; and Americans With Disabilities Act implementation plans. Similarly, Montana has removed some Federal regulation language, including previous versions of 30 CFR 884.13 through 884.15 and 30 CFR 926.21, from its Plan. This State and Federal language was never required to be incorporated in the State Plan. As such, removal is appropriate.

Montana removed historic records related to approval and revision of its AML Program such as transmittal memos, records of public meetings, and discussion records between the State and OSMRE. Appendix A to the Plan includes a chronological list of significant Montana AML Program historical events. The removed historical documents are not required to be included in the State Plan and removal is therefore appropriate.

Montana has removed sections entitled The New Interim Bond Forfeiture Projects Initiative and The New Bankrupt Surety Bond Forfeiture Projects Initiative. To qualify for reclamation under these programs, sites must have been mined for coal or affected by coal mining processes and the site left in either an un-reclaimed or inadequately reclaimed condition (1) between August 4, 1977, and April 1, 1980 (the date on which the Secretary of the Interior approved Montana's regulatory program pursuant to Section 503 of SMCRA), and any funds pursuant to a bond or other financial guarantee or from any other source that would be available for reclamation and abatement were not sufficient to provide for adequate reclamation or abatement at the site, or (2) between August 4, 1977, and November 5, 1990, and the surety of the mining operator became insolvent during such period, and as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source were not sufficient to provide for adequate reclamation or abatement of the site. In addition, to qualify for reclamation or abatement funding under the initiatives cited above, such sites must have been either Priority 1 or 2 sites pursuant to section 403(a)(1) and (2) of SMCRA. Because more than 30 years have passed since any site could qualify

for reclamation under these requirements, this part is no longer relevant to the Montana Program. As such, removal of the sections related to these initiatives is appropriate.

Montana is repealing and not replacing its Plan section entitled The Grant Set Aside for Future Priority I-III Coal, and AMD Abatement / Treatment Program Initiative because it no longer applies to the Montana Program. The State retains its Trust Fund for future expenditures on abandoned mine reclamation (coal or noncoal) and its OSMRE Trust (coal only). No new grant funds are placed in these accounts and interest earned is considered State funds in accordance with 30 CFR 873.12. Montana also has an approved interest-bearing account earmarked for the operation and maintenance of the Belt Water Treatment Plant authorized via letter from OSMRE dated July 21, 2010. However, this is not a set-aside account under SMCRA section 402(g)(6) and was properly funded using Prior Balance Replacement and Certified in Lieu Funds. Although Montana is removing this section from its Plan, its historically approved and created accounts remain in existence and are properly administered through the State's normal operations and overseen by OSMRE through routine oversight and grant monitoring processes.

Montana is removing its Emergency Reclamation Responsibility section previously approved under SMCRA sections 401(c)(5) and 410 and 30 CFR 877.14, and 30 CFR part 879. This program only applied to emergency coal hazards and is no longer applicable or necessary under Montana's certified AML Program.

All content removal support Montana's goals of streamlining and updating its Plan consistently with updated Federal requirements as required by OSMRE through its March 6, 2019 letter sent under the authority of 30 CFR 884.15. We therefore approve these changes.

#### **IV. Summary and Disposition of Comments**

##### *Public Comments*

We asked for public comments on the amendment, but none were received.

#### *Federal Agency Comments*

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), OSMRE solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Montana Plan on October 14, 2020 (Administrative Record No. OSM-2020-0004-0004). We did not receive any comments.

#### *Environmental Protection Agency (EPA) Concurrence and Comments*

OSMRE solicited EPA's comments on the proposed amendment (Administrative Record No. OSM-2020-0004-0004). The EPA did not respond to our request.

#### *State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

OSMRE solicited comments on the proposed amendment from the SHPO (Administrative Record No. OSM-2020-0004-0004) and the ACHP (Administrative Record No. OSM-2020-0004-0005). SHPO did not respond to our request. By email dated December 4, 2020 (Administrative Record No. OSM-2020-0004-0006), ACHP indicated its belief that the revised Plan did not have any involvement with OSMRE's National Historic Preservation Act (NHPA) Section 106 review process in Montana, and therefore ACHP does not have any comments on this Plan. OSMRE agrees with ACHP's assessment that the revised Plan does not alter OSMRE's NHPA Section 106 review process in Montana.

#### **V. OSMRE's Decision**

Based on the above findings, we are approving Montana's AML Plan amendment that was submitted on August 4, 2020.

To implement this decision, we are amending the Federal regulations, at 30 CFR



part 926, which codify decisions concerning the Montana Plan. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Generally, SMCRA requires that each State with an AML program must have an approved State regulatory program pursuant to section 503 of the Act. Section 503(a) of the Act requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

## **VI. Procedural Determinations**

### *Executive Order 12630 – Governmental Actions and Interference with Constitutionally Protected Property Rights*

This rule would not affect a taking of private property or otherwise have taking implications that would result in private property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

### *Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

### *Executive Order 12988 - Civil Justice Reform*

The Department of the Interior has reviewed this rule as required by Section 3(a)

of Executive Order 12988. The Department has determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct, rather than a general standard, and promote simplification and burden reduction. Because section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the Montana Plan or to the Plan amendment that the State of Montana submitted.

#### *Executive Order 13132 - Federalism*

This rule is not a “[p]olicy that [has] Federalism implications” as defined by section 1(a) of Executive Order 13132 because it does not have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Instead, this rule approves an amendment to the Montana Plan submitted and drafted by that State. OSMRE reviewed the submission with fundamental federalism principles in mind as set forth in sections 2 and 3 of the Executive order and with the principles of cooperative federalism as set forth in SMCRA. *See, e.g.*, 30 U.S.C. 1201(f). As such, pursuant to section 503(a)(1) and (7) (30 U.S.C. 1253(a)(1) and (7)), OSMRE reviewed Montana's amendment to ensure that it is “in accordance with” the requirements of SMCRA and “consistent with” the regulations issued by the Secretary pursuant to SMCRA.

#### *Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments*

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the Montana program that does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

*Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. We are not required to provide a detailed statement under the National Environmental Policy Act of 1969 (NEPA) because this rule qualifies for a categorical exclusion under the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(B)(29).

### *National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. OMB Circular A-119 at p. 14. This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

### *Paperwork Reduction Act*

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

### *Regulatory Flexibility Act*

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

### *Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

### **List of Subjects in 30 CFR part 926**

Intergovernmental relations, Surface mining, Underground mining.

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David A. Berry, Regional Director

Interior Unified Regions 5, 7-11

For the reasons set out in the preamble, 30 CFR part 926 is amended as set forth below:

**PART 926 – Montana**

1. The authority citation for part 926 continues to read as follows:

**Authority:** 30 U.S.C. 1201 et seq.

2. Section 926.25 is amended in the table by adding an entry in chronological order by “Date of final publication” to read as follows:

**§ 926.25 Approval of Montana abandoned mine land reclamation plan amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
* * * * * August 4, 2020	* * <b><u>[Insert date of publication in the Federal Register]</u></b>	Repeal and replace Certified AML Plan in response to OSMRE 884 Letter and State initiative streamlining of Plan. Updates Plan to be consistent with changes to Federal program and extends limited liability protection for certain coal and noncoal reclamation projects.  Addition of 82-4-1006, MCA.